IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6784 of 2001
With
SPECIAL CIVIL APPLICATION NO.10901 OF 2002

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BATLIBOI & COMPANY - Petitioner(s)
Versus
RAVINDRA GAJANAND CHAUBAL - Respondent(s)

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Appearance :
NANAVATI ASSOCIATES for Petitioner(s) : 1,
MR DG CHAUHAN for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 13/01/2006

ORAL JUDGMENT

1. This petition is directed against the award dated 17.10.2000 passed by the Labour Court, Surat in Reference (LCS) No.113 of 1995, directing the petitioner to reinstate the respondent with 50% back wages.

2. The short facts of the case are that the respondent was Secretary of the Shriram Estate Cooperative Employees Credit Society Ltd formed by the employees of the petitioner. There was some misappropriation in the account of the said Society and it was found that the respondent along with other persons was found guilty and responsible for not maintaining the accounts and misappropriation of funds to the tune of Rs.29,87,500/-. An inquiry was instituted against the respondent and ultimately the petitioner was discharged from service. The respondent, therefore, raised an industrial dispute which was referred for adjudication and registered as Reference (LCS) No.113 of 1995. The Labour Court, after hearing the parties, passed the aforesaid award.

3. Learned counsel for the petitioner submitted that that the Labour Court has committed an error in granting reinstatement with 50% back wages. He further submitted that looking to the gravity of the offence, the Labour Court ought not to have interfered with the order of dismissal.

4. Learned counsel for the respondent supported the judgement of the

Labour Court and submitted that no case is made out by the respondent to cause interference in this petition.

5. Heard the learned counsel for the respective parties. As a result of hearing and perusal of the record, it is found that the Labour Court has given cogent and convincing reasons with regard to reinstatement. I am in complete agreement with the reasonings adopted and findings arrived at by the Labour Court. However, Moreover, as the breach is of the provisions of Sections 25G and H there is no justification for granting back wages. The law on the subject is well settled. In the case of Ram Ashrey Singh Vs. Ram Bux Singh, reported in (2003) II LLJ 176, it is held that the workman had no automatic entitlement to back wages since it is discretionary and has to be dealt with in accordance with facts and circumstances of each case. In the case of General Manager, Haryana Roadways Vs. Rudhan Singh, reported in JT 2005(6) SC 137 (=2005 (5) SCC 591), after referring to various decisions on the said subject, the Apex Court held that order for payment of back wages should not be passed in mechanical manner, but a host of factors are to be taken into consideration before passing any such order.

6. In the premises aforesaid the impugned award qua back wages is quashed and set aside. It is stated that the respondent has already attained the age of superannuation. Therefore, I am of the view that interests of justice

would be met by directing the petitioner to treat the respondent as retired from service and to pay him all retirement benefits in lieu of the award of the Labour Court. Therefore, it is directed that the petitioner shall treat the respondent as retired from service and he shall be paid all his retirement dues accordingly. Such retirement dues shall be paid within a period of four weeks from today. The award of the Labour Court is modified to the aforesaid extent. Rule is made accordingly with no order as to costs.

7. In view of the order passed in SCA No.6784 of 2001, no orders are required to be passed in Special Civil Application No.10901 of 2002 and the same is disposed of accordingly. Rule is discharged with no order as to costs.

[K.S. JHAVERI, J.]

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